IN THE HIGH COURT OF SIKKIM

GANGTOK

Criminal Revision Petition No. 9 of 2005

(With Crl. Misc. Application No.14 of 2005)

Criminal Revision Petition No. 10 of 2005

(With Crl.Misc.Application No.15 of 2005)

Criminal Revision Petition No. 11 of 2005

And

Criminal Revision Petition No. 12 of 2005

Central Bureau of Investigation,
Through the Additional Suptd. of Police,
Central Bureau of Investigation,
Special Police Establishment,
Anti Corruption Branch, 234/4,
Acharya Jagadish Chandra Bose Road,
Nizam Palace (14th & 15th Floors)
Kolkata – 700020.

..... ***Petitioner***

Versus

1. **Santosh Kumar Halder,**
S/o Lt. A. K. Halder, Working for gain as
Asstt.Manager (Depot)/ Chief Labour Inspector,
FSD/FCI, Rangpo, East Sikkim.
R/o Nabanagar, Bizpur, 24-Parganas (South).

And 33 Others

..... ***Accused/Respondents***

For the Petitioner	:	Mr. Ranjan Kumar Roy, Special Public Prosecutor.
For the Respondents 1, 2, 3, 7 & 8	:	Mr. A. Moulik, learned Senior Counsel and Mr. N. G. Sherpa, learned Counsel.
For the Respondents 4, 6, 15 to 26 & 28 to 34.	:	Mr. N. Rai, learned Counsel and Miss Jyoti Kharga, learned Counsel.
For the Respondents 5, 9 to 14.	:	Mr. B. Sharma, learned Senior Counsel and Mr. T. Namgyal, learned Counsel.

Present : The Hon'ble Shri Justice A. P. Subba, Judge.

Date of Order : 20th September, 2006.

ORDER

A.P.Subba, J.

Since the facts of the above four (4) Criminal Revision Petitions are similar, and identical questions of law arise in them, they were taken up together for hearing and are being disposed of by this common order.

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2. Criminal Revision Petition No. 11 of 2005 is directed against the order dated May 26, 2005 passed in Criminal Case No.3 of 2000 renumbered as S. T. (CBI) Case No. 3 of 2004, by the learned Special Judge, P. C. Act (East and North), at Gangtok, discharging accused Nos. 8 to 16 named in the supplementary charge sheet and for treating the supplementary charge sheet against accused Nos.1 and 3 to 6 as *non-est*. Criminal Revision Petition No.12 of 2005 is directed against the Order of the same date, i.e., May 26, 2005 passed in Criminal Case No.4 of 2000 renumbered as S.T. (CBI) Case No.4 of 2004 by the same Court, similarly discharging accused Nos.6 to 14 named in the supplementary charge sheet and also for treating the supplementary charge sheet as against accused Nos. 1 to 5 as *non-est*. The subject matter of challenge in Criminal Revision Petition Nos. 9 of 2005 is the order dated June 3, 2005 passed in the above S. T. (CBI) Case No.3 of 2004, directing closure of prosecution evidence and posting the case for examination of accused persons under Section 313 Criminal Procedure Code and the subject matter of challenge in Criminal Revision Petition No.10 is the order of the

same date i.e., June, 3, 2005 is S. T. (CBI) Case No.4 of 2004 similarly, directing closure of prosecution evidence and posting the case for examination of accused persons u/S. 313 Cr.P.C.

3. As per the facts set out in the above Criminal Revision Petitions, R.C.23-98-KOL was registered by the Delhi Special Police Establishment, Anti Corruption Branch, Kolkata, on receipt of reliable source information, to the effect that one Shri Ratan Kumar Garg (A-3) who is the authorized FCI carrying Contractor, in league with Shri Santosh Kumar Haldar, Assistant Manager, FSD (FC) Rangpo Depot, in East Sikkim had been diverting consignments of rice, wheat and sugar from FCI, Siliguri and New Jalpaiguri Depots, to Siliguri markets instead of dispatching and delivering the same to FCI Depots at Rangpo and Jorthang, in Sikkim by making false entries in the check posts etc. On completion of the investigation, that was initiated on the basis of the above source information, the I.O. submitted two charge sheets under ***Sections 120B/407/420/467/468/471/473/477A of IPC and Section 13(2) read with Section 13(1)(d) of P. C. Act, 1988*** on 30.11.2000 – 1st charge sheet being against 14 accused persons and the 2nd charge sheet being against 18 accused persons. While Criminal Case No.3 of 2004 was registered against one Santosh Kumar Haldar and 13 Others on the basis of the 1st charge sheet, Criminal Case No.4 of 2000 was registered against the same accused Santosh Kumar Haldar and 17 others on the basis of the 2nd charge sheet under the same sections of law. Since both the charge sheets originated from the same first information report and they were in relation to the same transaction, both the cases were being taken up on the same dates. Thus, after the preliminary steps were completed in both the cases, hearing on charge were concluded on

4.12.2001 and orders thereto were pronounced on 12.2.2002 in both the cases. By the order passed in S. T. (CBI) Case No.3 of 2004, seven accused persons, namely, Uttam Lal Saha (A-7), Binod Roy (A-8), Pappu Basnett (A-9), Dinanath Prasasd (A-10), Mohan Thapa (A-11), Pushpa Sharma (A-12) and Ajay Kumar Jain (A-14) were discharged, there being no prima facie material against them and charges were ordered to be framed against the remaining 7 accused persons. Similarly, by the Order dated same i.e., 12.2.2002 passed in S. T. (CBI) Case No.4 of 2004, seven accused persons, namely, Santosh Roy (A-7), Baijnath Mahato (A-8), Md. Barka (A-9), Cyril Bara (A-10), Kul Bahadur Chettri (A-12), Anil Poddar (A-13) and Ajay Kumar Jain (A-15) were discharged, as there was no sufficient prima facie material against them and charges were ordered to be framed against the remaining 11 accused persons. After the pronouncement of the order on charge, trial in respect of the remaining accused in both the cases proceeded and by November 2003, 14 witnesses in all had been examined.

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4. On 11.11.2003, which was the date fixed for examination of further prosecution witnesses in both the cases, the prosecution filed an application stating that a supplementary charge sheet against new accused persons in connection with the same case had been filed and prayed for deferring the examination of further PWs. until charges were framed against the newly added accused persons. The prayer made by the prosecution was allowed and cognizance of offences against the newly added accused persons was taken and summonses were directed to be issued in both the cases. Dates were thereafter fixed for appearance of the newly added accused persons and supply of the copy of the supplementary charge sheet. On 16.2.2004, on a prayer

made by the learned Public Prosecutor, further time to supply the copies of the supplementary charge sheet was allowed in both the cases. After several adjournment of dates on the ground that the copies of the supplementary charge sheet were not ready, both the cases came up on 26.5.2005 for supply of copy of supplementary charge sheet to the newly added accused persons. However, on this date, none appeared on behalf of the prosecution and on such default, the accused Nos. 8 to 16 mentioned in the supplementary charge sheet in ST (CBI) Case No.3 of 2004 and accused Nos. 6 to 14 mentioned in the supplementary charge sheet in ST (CBI) Case No.4 of 2004 were discharged and the supplementary charge sheet in respect of accused Nos. 1, 3 to 6 in S. T. (CBI) Case No.3 of 2004 and supplementary charge sheet in respect of accused No.1 to 5 in S. T. (CBI) Case No.4 of 2000 were ordered to be treated as non-est and 3.6.2005 was fixed in both the cases for further prosecution evidence. However, on the above date as well, none appeared for the prosecution, even though all the accused entered appearance in both the cases. Consequently vide orders dated 3.6.2005 passed on that date the prosecution evidence in both the cases were ordered to be closed and both the cases were posted for recording statement of the accused persons under Section 313 Cr.P.C. for 29.6.2005.

5. Being aggrieved by the above orders relating to discharge of accused persons and closure of prosecution evidence, the CBI has come up in these Revision Petitions. The orders dated 26.5.2005 regarding discharge of accused persons have been challenged in the Criminal Revision Petition Nos.11 and 12 of 2005, while the orders dated 3.6.2005 regarding closure of prosecution evidence is the subject of

challenge in the other two Criminal Revision Petition Nos. 9 and 10 of 2005.

It is pertinent to note that the Criminal Revision Petitions were originally filed against 14 Accused/Respondents. Subsequently, 20 Accused/Respondents were impleaded. However, out of the total 34 Accused/Respondents, Shri Anil Poddar, accused/respondent No.27 was reported to be dead and, accordingly, the matter proceeded against the 33 remaining Accused/Respondents.

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6. The Criminal Revision Petition Nos. 11 and 12 were first taken up for hearing on 10.8.2006 and the Criminal Revision Petition Nos. 9 and 10 were then taken up for hearing on 29.8.2006. Mr. Ranjan Kumar Roy, the learned Special Public Prosecutor appearing on behalf of the CBI – Petitioner, Shri A. Moulik, learned Senior Counsel appearing on behalf of the Respondent Nos. 1, 2, 3, 7 and 8, Mr. N. Rai, learned Counsel appearing on behalf of Respondent Nos. 4, 6, 15 to 26 and 28 to 34 and Mr. B. Sharma, learned Senior Counsel appearing on behalf of Respondent Nos. 5, 9 to 14 were heard.

7. For the sake of convenience, we may first take up the rival contentions raised by the parties in Criminal Revision Petition Nos. 11 and 12 of 2005.

8. As already noted above, the subject matter of challenge in these Criminal Revisions are the two orders both dated 26.5.2005 passed in S.T. (CBI) Case No.3 of 2004 and S. T. (CBI) Case No.4 of 2004, discharging newly added Accused/Respondents and for treating the supplementary charge sheet as *non-est* against some of the accused

persons. Reproduced below are the two orders passed in the said cases :-

S.T.(CBI) Case No.3 of 2004

"26.5.2005 None present for the State/C.B.I.

All the 16 accused persons present with their respective ld. Counsel.

Date is fixed for supply of copies of supplementary charge sheet which had been filed as far back as on 11.11.2003 vide order of even date. It is a matter of great surprise that even within a period of one and a half year the C.B.I. has failed to supply copies of the supplementary charge sheet to the accused persons. In my opinion further grant of time to the C.B.I. for supply of copies of the supplementary charge sheet would be simply an abuse of the process of the Court. Therefore, accused Nos.8 to 16 as per the supplementary charge sheet are hereby discharged and the supplementary charge sheet as against the accused Nos.1, 3 to 6 is non-est.

Since the supplementary charge sheet had been filed at the stage of prosecution evidence, the prosecution/CBI shall produce further evidence.

For further evidence.

To : 3.6.2005."

Sd/-
(Tashi Wangdi)
Spl.Judge, P.C.Act.

S.T.(CBI) Case No.4 of 2004

"26.5.2005 None present for the State/C.B.I.

All the 11 accused persons except accused Nos. 9 and 11 present with their respective ld. Counsel.

Accused Nos. 9 and 11 have prayed for exemption from their personal appearance. Same is considered and allowed.

Date is fixed for supply of copies of supplementary charge sheet which had been filed as far back as on 11.11.2003 vide order of even date. It is a matter of great surprise that even within a period of one and a half year the C.B.I. has failed to supply copies of the supplementary charge sheet to the accused persons. In my opinion further grant of time to the C.B.I. for supply of copies of the supplementary charge sheet would be simply an abuse of the process of the Court. Therefore, accuse Nos. 6 to 14 as per the supplementary charge sheet are hereby discharged and the supplementary charge sheet as against the accused Nos.1 to 5 is non-est.

Since the supplementary charge sheet had been filed at the stage of prosecution evidence, the Prosecution/C.B.I. shall produce further evidence.

For further evidence.

To : 3.6.2005."

Sd/-
(Tashi Wangdi)
Spl.Judge, P.C.Act.

9. As can be noticed from the orders reproduced above, the newly added accused/Respondents who were named in the supplementary charge sheet were discharged on default of the prosecution to furnish copies of the supplementary charge sheet for supplying the same to the said accused persons. The submission of the learned Special Public Prosecutor in this regard, is that, even though the prosecution had undertaken to furnish copies of the supplementary charge sheet to the Court, it was the duty of the Court to supply the copies of these documents to the accused persons, and in view of this, it was not proper on the part of the Court to discharge the accused persons on the failure of the prosecution to supply copies of the documents on the

extended dates. It was the specific submission of the Special learned Public Prosecutor that the duty cast on the Court to supply copies to the accused persons was mandatory which could not have been shifted to the prosecution and the default of the prosecution could not have been made the ground for discharge of the accused persons. The learned Counsel for the Respondents, on the other hand, in one voice, contended that the prosecution case having lingered on for about one and a half years merely on account of the failure of the prosecution to supply copies of the supplementary charge sheet, had caused undue harassment to the accused Respondents, most of whom had to come to Sikkim to attend the Court from several places outside Sikkim. In view of such harassment being caused to the accused persons, and in view of the default of the prosecution despite enough opportunity having already been given, the learned trial Court had no other option but to discharge the accused Respondents to save them from further harassment, and, as such, the order was correct, legal and sound as per law, in the circumstances of the case. Mr. B. Sharma, the learned Senior Counsel taking an additional ground further submitted that the prosecution could not have filed the supplementary charge sheet in absence of any permission from the learned trial Court for conducting further investigation.

10. As can be made out from the above respective stand taken by the parties, the question that falls for consideration of this Court is whether it was a mandatory duty on the part of the Court to supply copies of the supplementary charge sheet, and if so, whether such mandatory duty could have been passed on to the shoulder of the prosecution and whether on the consequent failure of the prosecution to

discharge the duty so imposed the accused persons could have been discharged.

11. The provision contained in Section 207 Cr.P.C. leaves no room for doubt that the duty of furnishing copy of police report and other documents to the accused in warrant cases, has been laid on the Magistrate who takes cognizance. The relevant portion of the said Section which provides for supply of copy of police report and other documents to the accused is to the following effect :-

> "207. **Supply to the accused of copy of police report and other documents.** – In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following :-
>
> (i) the police report;
>
> (ii) the first information report recorded under Section 154;
>
> (iii) the statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of Section 173;
>
> (iv) the confessions and statements, if any, recorded under Section 164;
>
> (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173;
>
> ....."

12. A bare reading of the above section makes it clear that a duty has been cast on the Magistrate to furnish the copy of the police report and other documents to the accused without delay and free of cost. This section therefore creates a statutory obligation on the part of the Magistrate to supply copies of all documents and statement of

witnesses to the accused. This duty, which a Magistrate is required to perform in terms of Section 207, Cr.P.C. is a judicial function, which has to be discharged in a judicial manner as per the observation of the Apex Court in ***State of U.P. vrs. Laksmi Brahman AIR 1983 SC 439.*** It has been held that, in order to comply with the requirement of this section, the Magistrate has to enquire from the accused when he is produced before him, as to whether copies of various documents set out in the section have been supplied to him or not and record his statement.

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A further duty cast on the Magistrate u/s 238 Cr. P. C. requires the Magistrate to satisfy himself at the commencement of the trial, that free and legible copy of the document mentioned in Section 207 have been delivered to the accused and if it comes to his notice that such copies have not been furnished, he should cause the same to be furnished. Section 238 which so requires a Magistrate to satisfy himself that there is required compliance of Section 207 is as follows :-

> **"238. <u>Compliance with Section 207</u>. - When, in any warrant-case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provision of Section 207."**

13. Thus, a combine reading of Sections 207 and 238 quoted above, would go to show that the Magistrate is now duty bound to see that the accused is furnished with copies of all relevant documents at the commencement of the trial.

14. No doubt, the position of law in the old Code was different in so far as under the repealed Code it was the duty of the police to furnish copies of the police report and other documents to the accused persons. However, as such arrangement was not found to have worked

satisfactorily causing much avoidable delay in the trial of cases, the duty to supply copies of relevant documents to the accused persons has been imposed on the Magistrate by introducing Section 207 and making the duty mandatory. Thus, under this provision it is for the Magistrate to see that the police papers and other documents have been supplied to the accused.

15. Indeed, the question whether the provisions of Section 207 Cr.P.C. is mandatory or directory is no longer ***res integra*** after the above decision reported in ***AIR 1983 SC 439*** in which their Lordships of the Supreme Court have held that the provisions contained in Section 207 are mandatory.

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16. Having thus found that the provisions contained in Section 207 is mandatory and it would be the duty of the Magistrate to ensure compliance of the same under the provisions of Sec. 238, we now proceed to see if there is compliance of this provision in the case at hand.

A reading of the impugned orders already reproduced above would go to show that the learned trial Court passed on the duty of supplying copies of the supplementary charge sheet enjoined on it by Section 207 to the shoulders of the prosecution and on their failure to carry out the same, the learned Court passed the order of discharge of the newly added accused persons. This goes to show that the learned trial Court has proceeded on the assumption that it is invariably the duty of the prosecution to supply copies of the police papers to the accused persons and not for the Court. There is no doubt that some lapses occurred on the part of the prosecution, in so far as, the prosecution was not sincere to the commitment made before the Court. However,

the fact remains that such undertaking given by the prosecution does not absolve the Court from the responsibilities cast on it by law to see that the copies of the police report and other documents are furnished to the accused.

The impugned orders further go to show that apart from failure of the prosecution to supply copies of the charge sheet, the long time taken by the prosecution coupled with the failure to carry out the purpose for which time was granted is also the ground for discharge of the accused persons. So far as the question of effects of delay in the trial is concerned, it must be conceded that the failure on the part of the prosecution to honour the commitment for a long period contributed to the delay in the trial. However, it must be noted that discharge of the accused in a warrant triable case on such ground alone would not be in consonance with the principles underlying a fair trial. In this regard, it is relevant to bear in mind the observation made by the Apex Court in the recent case of ***Zahira Habibulla H. Sheikh & Another vs. State of Guj. And Ors. 2004 SCC (Cri) 999*** that it will not be correct to say that it is only the accused who must be fairly dealt with. Such an approach, according to the Apex Court, would be turning a Nelson's eye to the needs of the society at large. Throwing light on the principles that govern a fair trial, the Apex Court in the above case observed as follows: -

> **"The concept of fair trial entails the familiar triangulation of interests of the accused, the victim and society, and it is the community that acts through the State and prosecuting agencies. Interests of society are not to be treated completely with disdain and as persona non grata. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of society at large and the victims or their family members**

and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Public interest in the proper administration of justice must be given as much importance, if not more, as the interests of the individual accused. In this courts have a vital role to play. The cause of the community deserved equal treatment at the hands of the court in the discharge of its judicial functions". *(emphasis supplied).*

The Apex Court then proceeded to make the following further observation :-

> **"The Supreme Court has often emphasized that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to society in general."**

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17. In the later case of ***Zahira Habibullah Sheikh & Another v. State of Gujarat & Ors.*** reported in ***2006 2 SCC (Cri) 8*** the Apex Court has categorically held that delay is no ground to close evidence and acquit the accused. Thus if closure of evidence or acquittal of accused cannot be justified on the ground of delay, it follows that discharge of accused on similar grounds cannot also be justified.

The next question that stares us in the face is, was the discharge of the accused the only option the learned Court was left with in the circumstances of the case. In this regard the submission of the learned Counsel for the Respondents is that discharge of the accused was the only desirable course open to the learned Court particularly in view of the fact that the prosecution was not diligent in pursuing the case and the delay that was being caused was interfering with the right of the accused to speedy trial. We have already come to the conclusion above that lack of diligence on the part of the prosecution cannot absolve the Court from performing the duty

imposed by law and cannot also justify extreme steps like discharge of the accused/respondents. Coming now to the question of delay and the alleged violation of right to speedy trial of the accused, it may be noted that there is undoubtedly some delay. As per the record, copies of the supplementary charge sheet were not supplied in spite of about one and a half years time taken for that purpose. Can such delay be taken to have violated the right of the accused/respondent to speedy trial to such an extent as to justify closure of prosecution evidence and discharge of the accused, is the question we are faced with. For an answer to this question, we may refer with advantage the observation of the Apex Court in ***A. R. Antulay vs. R. S. Nayak AIR 1997 SC 1701.*** Considering the question of appropriate steps that may be taken in case of delay in a criminal trial it was observed that "the Criminal Courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time as prescribed by the directions made in Common Cause Case (1), Raj Deo Sharma Case (i) and (ii). The following observation of the Court are apposite:-

> "(9) **Ordinarily speaking where the Court comes to the conclusion that Right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be shall be quashed. <u>But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the Court to make such other appropriate order – including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded – as may be deemed just and equitable to the circumstances of the case</u>.**

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of Right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given case before pronouncing upon the complaint. ....."*(emphasis supplied)*

It is relevant to note that the above decision was upheld and reaffirmed by a larger Bench in ***P. Ramachandra Rao vs. State of Karnataka J. T. 2002 (4) SC 92***. The Bench speaking through R. C. Lahoti J (as his Lordship then was) expressed the opinion as follows :-

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"30. For all the foregoing reasons, we are of the opinion that in Common Cause case (1) (as modified in Common Cause (ii) and Raj Deo Sharma (i) and (ii), the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:

(1) The dictum in A.R. Antulay's case is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A. R. Antulay's case, adequately take care of right to speedy trial. We uphold and re-affirm the said propositions.

(3) The guidelines laid down in A. R. Antulay's case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket formula. Their applicability would depend on the fact-situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for

conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in several decisions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (i), Raj Deo Sharma case (i) and (ii). At the most, the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to supply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A. R. Antulay' case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The criminal courts should exercise their available powers such as those under sections 309, 311 and 358 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases, jurisdiction of High Court under section 432 of Cr.P.C. and Article 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions." *(emphasis supplied).*

Referring to the above two decisions, the Apex Court in the later decision rendered in ***State of Rajasthan vs. Ikbal Hussen 2004 (4) A.I.C.L.R*** at page 664 observed as follows: -

" .....Delay is usually welcomed by the accused. He postpones the delay of reckoning thereby, it may impair the prosecution's ability to prove the case against him. In the meantime,he remains free to indulge in crimes. An accused cannot raise this plea if he has never taken steps to demand a speedy trial. A plea that proceedings against him be quashed because

> **delay has taken place is not sustainable if the record shows that he acquiesced in the delay and never asked for an expeditious disposal. In India the demand rule must be rigorously enforced. No one can be permitted to complain that speedy trial was denied when he never demanded it. The core of "Speedy Trial" is protection against incarceration. An accused who has never been incarcerated can hardly complain. At any rate, he must show some other very strong prejudice. The right does not protect an accused from all prejudicial effects caused by delay. Its core concern is impairment of liberty. Possibility of prejudice is not enough. Actual prejudice has to be proved. The plea is inexorably and inextricably mixed up with the merits of the case. No finding of prejudice is possible without full knowledge of facts. The plea must first be evaluated by the trial Court."** *(emphasis supplied).*

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18. It is thus amply clear from the above that in order to raise a plea of violation of right to speedy trial successfully, it must be shown that a demand was made for speedy trial. If no such demand was made, it is plain that under the 'demand rule' mentioned above, no such plea can be raised.

19. Now passing on to the next point, it may be noted that, Mr. N. Rai, learned Counsel for Respondent Nos. 4, 6, 15 to 26 and 28 to 34 took a specific objection to the filing of the supplementary charge sheet by the Investigating Officer in the present case. The submission of the learned Counsel in this regard, is that, the prosecution could not have filed the supplementary charge sheet in absence of a permission from the learned trial Court. According to him, the prosecution ought to have taken permission from the learned trial Court in view of the law laid down by the Apex Court in ***Hasanbhai Valibhai Quereshi vs. State of Guj. & Ors. AIR 2004 SC 2078***. The learned Counsel placed reliance in this regard on the head note 'B' which is to the following effect:-

> **'On fresh facts coming to light police should seek permission of Court for further investigation.'**

No doubt, if we go by the head note reproduced above, we find that a permission from the Court would be necessary for carrying on further investigation. It however appears that the head note relied on by the learned Counsel is not in conformity with the ratio of the case. The relevant observation which was made by the Apex Court after referring to an observation made in ***Om Prakash Narang and Another vs. State (Delhi Amn.) AIR 1979 SC 1791*** in para 13 of the judgment is as follows :-

> **"13. ..... When defective investigation comes to light during course of trial, it may be cured by further investigation if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the Courts. In view of the aforesaid position in law if there is necessity for further investigation the same can certainly be done as prescribed by law. ....."** *(emphasis supplied).*

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20. Thus, what was observed in the context of the peculiar facts of the case is that, it would ordinarily be desirable that police should inform the Court and seek formal permission to make further investigation when defective investigation comes to light during course of trial. Obviously, this observation cannot be taken as laying down that the police should invariably seek permission of the Court for further investigation when fresh facts come to light. This position would be clear from what has been observed by the Court in the preceding paragraphs 11 and 12 of the same judgment. The two paragraphs may be reproduced as follows:-

"11. Coming to the question whether a further investigation is warranted, the hands of the investigation agency or the Court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth.

12. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the Court as such, it is open to the police to conduct proper investigation even after the Court took cognizance of any offence on the strength of a police report earlier submitted ....." *(emphasis suplied)*.

21. To the same effect are the observations made by the same Bench in ***Zahira Habibulla H. Sheikh & Another vs. State of Gujarat & Ors. 2004 SCC (Cri.) 999 (supra)***. The observation made in paragraph 79 of the judgment is as follows:-

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"79. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any directions from the Court as such, it is open to the police to conduct proper investigation, even after the court took cognizance of any offence on the strength of a police report earlier submitted."

Section 173(8) of Cr.P.C. referred to above is as follows:-

"173.(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

22. A bare reading of the above clause would show that the provision contained in the Section does not preclude further investigation over and above the report forwarded to the Court under sub-section (2) if the police obtain further evidence both oral or

documentary. Thus, on an analysis of the Section 173(8) in the light of the observation made by the Apex Court in the above cited cases, we cannot arrive at any conclusion that permission of the Court would be a condition precedent for further investigation in all cases.

23. Thus, the position of law on the point being what is stated above there is no option but to reject the contention of Shri Rai regarding non-permissibility of submitting supplementary charge sheet without any permission from Court.

24. In view of the foregoing discussion, it must be held that the learned trial Court failed to perform the duty imposed on it by the express provisions of law, and therefore, there is violation of mandatory provision of law leading to flagrant miscarriage of justice.

HIGH COURT OF SIKKIM GANGTOK

25. Having thus disposed of the question relating to the propriety of the order dated 26.5.2005, we may now pass on to the question relating to the propriety of the two orders both dated 3.6.2005, passed by the same Court which are the subject matter of challenge in Crl. Revision Petition Nos. 9 and 10 of 2005.

26. The said two orders may be set out as follows: -

> **"3.6.2005** None Present for the State/C.B.I.
>
> All the accused persons 1 to 7 present with their respective ld. counsel.
>
> Date is fixed for further evidence. However, for the second consecutive dates the C.B.I. is absent and has not prayed for adjournment also. As mentioned in my previous order the C.B.I. has failed to supply copy of the supplementary charge sheet during the period of one and a half year, I am of the opinion that further affording an opportunity to the Prosecution would be of no use. Hence, the Prosecution evidence is closed.
>
> Now to come up for statement of the accused persons under Section 313 Cr.P.C.
>
> To : 29.6.2006.

Sd/-
(Tashi Wangdi)
Special Judge, P.C. Act."

"3.6.2005 None Present for the State/C.B.I.
All the 11 accused persons present with their respective ld. counsel.
Date is fixed for further evidence. However, for the second consecutive dates the C.B.I. is absent and has not prayed for adjournment also. As mentioned in my previous order the C.B.I. has failed to supply copy of the supplementary charge sheet during the period of one and a half year, I am of the opinion that further affording an opportunity to the Prosecution would be of no use. Hence, the Prosecution evidence is closed.
Now to come up for statement of the accused persons under Section 313 Cr.P.C.
To : 29.6.2006.

Sd/-
(Tashi Wangdi)
Special Judge, P.C. Act."

27. The above impugned orders go to show that on 3.6.2005, which was a date fixed for further evidence of the Prosecution in both the cases, none appeared for the Prosecution and consequently, the Court closed the Prosecution evidence and posted the case for examination of accused persons under Section 313 Cr.P.C. While the learned counsel for the accused Respondents supported the above impugned order contending that the absence of the learned Public Prosecutor or the witnesses on the date fixed for evidence left the Court with no other option but to close the evidence of Prosecution, the submission of the learned special Public Prosecutor, on the other hand, is that even though the Public Prosecutor remained absent and the witnesses were also not kept ready, the Court concerned, keeping in view the fact that the offences were punishable under P. C. Act and

were triable under a warrant procedure ought to have exercised other powers available to it under the Code in so far as the law imposed an obligation on the Magistrate himself to summon the appropriate witnesses for the prosecution of the cases on such default of the prosecution to produce evidence.

The question that arises for consideration of this Court in these two Crl. Revision Petitions, is, whether the trial Court is right in closing the evidence of the prosecution, consequent upon the failure of the Public Prosecutor to appear on the date fixed for examination of prosecution witnesses and for non-production of witnesses.

28. Mr. A. Moulik, learned Senior Counsel, in support of his contention that the prosecution evidence was rightly closed by the learned trial Court on default of the learned Public Prosecutor to appear, particularly relied on a Single Bench decision of Jharkand High Court rendered in ***Saraswati Devi vs. State of Jharkand reported in 2004 Crl.L.J. 1512.*** In support of the same point, Mr. N. Rai, learned Counsel cited two decisions, namely, a Single Bench decision of Allahabad High Court rendered in ***State vs. Ulfatia reported in 1972 Crl. L. J. 994*** and a Single Bench decision of this High Court rendered in ***State of Sikkim vs. M. K. O. Nair and Another reported in 1986 Crl. L. J. 415.*** Mr. B. Sharma, learned Senior Counsel for accused/respondent Nos. 5, 9 to 14 cited the decision of Punjab & Haryana High Court in ***Nath Singh vs. State of Haryana . (Crl. Misc. Case No.19874-M of 1996*** decided ***on 3rd January, 1997).***

29. In order to see whether the above decisions relied on by the learned Counsel for the Accused/Respondents apply to the facts and

circumstances of the case on hand, it would be desirable to glance through the facts of respective cases.

30. A perusal of the facts in the above Jharkand High Court case would go to show that the prosecution had failed to produce even a single witness for about five years despite opportunity given. It was only after the closure of the prosecution evidence followed by examination of the accused u/s 313 Cr. P. C. that the prosecution woke up and filed an application u/s 311 which was rejected by the learned Magistrate mainly on the ground that the prosecution had failed to produce evidence despite 'more than enough opportunity' being given. In these circumstances, the High Court had held that the learned Court below had rightly closed the evidence and rejected the petition u/s 311 Cr. P. C. filed on behalf of the prosecution. The facts in Allahabad case were that the Court could not take up the case for some reason or other on some dates, and ultimately 9.7.1968 was fixed for production of prosecution evidence and on this date 4 prosecution witnesses were present, but neither the Public Prosecutor nor the Assistant Public Prosecutor appeared before the Court to produce the witnesses as required under sub-section 7 of Section 251A of the repealed Code. It also appears that the Public Prosecutor and the Assistant Public Prosecutor failed to put in appearance for prosecution despite information sent to them by the learned Magistrate and it was on such default of the prosecution that the impugned order discharging the witnesses and acquitting the accused was passed. On the said order being challenged before the High Court, the Allahabad High Court held that if prosecution witnesses who are present are not examined on account of the absence of the Public Prosecutor and if

there is absolutely no evidence on record, the Magistrate would have no option but to acquit the accused under sub-section (ii) of S. 251A of the Old Code unless he decides to adjourn the case or fix another date for production of prosecution evidence. In ***State of Sikkim vs. M. K. O. Nair,*** i.e., the other case relied on by the learned Counsel, the relevant facts are that on 4.2.1985, which was fixed for prosecution evidence after number of previous dates fixed for the same purpose had failed for non-appearance of witnesses on account of the failure of the prosecution to execute the processes issued against witnesses despite the undertaking given to the Court, the Court adjourned the case imposing cost of Rs.500/- on the prosecution, but when the prosecution expressed inability to pay the cost and on prayer being made that the Court might proceed further with the case, the Court refused the adjournment and declared the prosecution evidence closed. In the circumstances, the learned Single Judge referring to and relying on a decision of Calcutta High Court in ***Jyotirmoyre vs. Birendra Nath Air 1930 Cal 262,*** a Division Bench decision of Patna High Court in ***State vs. Mangila 1974 Crl. L. J. 221,*** and few other decisions including the Full Bench decision of the Madras High Court in ***State vs. Veerappan AIR 1980 Mad 260*** and duly taking note of the divergent views expressed by the different High Courts as to the duty of the Court regarding production of witnesses observed as follows :-

> **"..... The correct position appears to be that in a warrant case instituted on a police report, the primary duty is of the prosecution to produce witnesses, but since the prosecution has no power to compel the attendance of the witnesses, it is fully justified in seeking the help of the Court for their production. The help may be sought by making a prayer for issuance of summonses to the prosecution witnesses, or to issue warrants of arrest, if necessary. But unless such a**

> **prayer is made, it is not the duty of the Court to issue any summons or warrant of arrest if necessary. ....and there is no warrant for holding that to find whether the accused is not guilty, it is the duty of the Magistrate to procure all the prosecution evidence or to adjourn the case until all the prosecution witnesses have been produced. To hold otherwise would mean that the Magistrate has the duty not only to adjudge whether the accused is guilty or not, but also to step into the shoes of the prosecution, where the prosecution has lacked in prosecuting the accused....."**

The relevant facts of the above Punjab & Haryana High Court case were that the learned trial Court passed orders closing the prosecution case when the prosecution failed to produce its witnesses despite 5 opportunities being given. On this order being challenged before the Punjab & Haryana High Court, it was observed that the scales of justice cannot be tilted in favour of the prosecution to the detriment of the interest of the accused and accordingly held that when the prosecution is not sincere to its own obligations and commitments before the Court, the Court has power to pass such orders which are necessary for the advancement of the cause of justice.

31. The above decisions undoubtedly lay down that a Magistrate is not bound to compel the attendance of prosecution witnesses in each and every case. It may however be noted that the law point decided in two of the above decisions are in relation to the provisions contained in S.251A of the repealed Code which contained detail provision for trial of warrant cases by Magistrates. When this aspect of the issue was pointed out, Mr. N. Rai submitted that the provision contained in S.238 to 243 and 248 to 250 of the present Code more or less correspond to the old provisions contained in 251A, and, as such, the decisions cited above would be applicable in the present

case also. However, one more glaring difference that we cannot loose sight of is that the offences in none of the above cases are as serious arrd punishable under the provisions of P. C. Act as in the present case. That apart, further note must be taken of the fact that opinion on whether the Court is under a duty to compel the attendance of witnesses in a case in spite of negligent or uncooperative attitude of the prosecuting agency is divided and equally forceful view on the other side of the coin is not lacking. Two of the old decisions to which reference may be made in this regard are the decisions reported in ***AIR (30)1943 All 9, AIR 1954 Pepsu 80*** wherein it has been held that after the charge is framed in non-cognizable and cognizable cases, it is the duty of the Magistrate in the interest of General Public to see whether an offence has been committed and to punish if he thinks that the accused is guilty. Even in a case on a private complaint, if the case is non-compoundable and cognizable, the complainant cannot, under the Code, be required to produce his witnesses himself. If the complainant and his witnesses remain absent on any date after the charge has been framed, it is not open to the Magistrate to dismiss the case for default and to discharge of the accused. In a later decision rendered in ***State vs. Aboobaker (1961) Crl.L.J. 92 (2)*** a Division Bench of Kerala High Court has in clear terms observed that even in cases where parties do not produce evidence, it is the duty of the Court in the interest of justice to summon such of the witnesses whose evidence is necessary for just decision of the case. The Court is not so helpless as to pass an order of acquittal for want of evidence. The most recent of the decisions on the point cited is the decision of Gujarat High Court in ***CBI vs. Dayabhai Damabhai Dabhi,*** reported in ***2003 Crl. L. J. 4261*** which is just on the

point. The relevant facts in that case, were that the special case was registered u/s 5 of the P. C. Act 1988 r/w Sec.120-B and 161 IPC in the year 1989, yet the matter had not proceeded further till the year 1998. The prosecution had not produced witnesses despite passage of seven years. The prosecution had also never applied for issue of summonses to the witnesses nor the Court had itself issued summonses to any of the witnesses for remaining present in Court during the above seven years. Ultimately, the accused filed an application in the year 1998 praying for closing the prosecution evidence in the light of the decision of the Apex Court in ***Raj Deo Sharma vs. State of Bihar (1998) 7JT (SC)1***. The learned trial Court heard the parties and following the decision in the above Raj Deo Sharma's case closed the evidence of the prosecution. In the revision petition moved by the Petitioner CBI before the Gujarat High Court, it was noted that "The case on hand had different set of facts. Here the offences are punishable under the P. C. Act, and therefore on the face of the record, the offences which are being faced by the present Respondents are of a serious nature and they are required to be dealt with and decided by special Courts presided over by Special Judge. This fact cannot be overlooked and ignored." It was categorically observed that simply because the prosecution did not keep the witnesses present and simply because the witnesses summons was not applied for, it would not be just, proper and legal to close the evidence of prosecution behind the back of the original informant. Observation was made to the effect that even the Court itself could have exercised its powers suo moto for issuance of witnesses summonses for doing complete and substantial justice to both the parties. The closure of the prosecution evidence without intimation or notice to the

original informant in the case was thus held to have resulted in serious injustice to the cause of the informant and also to the cause of the system of justice.

32. It may be noted that the above view finds support from several recent decisions of the Apex Court. In ***Shailendra Kumar v. State of Bihar & Ors. AIR 2002 SC 270*** the Apex Court has clarified the position with regard to the duty of a Crl. Court when the prosecuting agency is not diligent. As per the facts set out in the case, the accused were being tried for murder. In the course of the trial of the case, learned Sessions Judge after examining 2/3 formal witnesses, closed the prosecution evidence without informing the Investigating Officer on the ground that no prayer was made by the prosecution either orally or written for adjournment or for examining other witnesses. Even though the order closing the prosecution evidence was recalled by the Court to which the case was transferred on the superannuation of the Presiding Officer of the original Court, the recalling order was set aside by the High Court of Patna on the ground that a criminal Court cannot recall its earlier order. An application filed by the State u/s 311 of Cr. P. C. thereafter was rejected in view of the order of the High Court in the revision application. A criminal Misc. case filed by the appellant informant in the High Court was also dismissed. In the appeal filed against the judgment dismissing the Crl. Misc. case, it was observed by the Apex Court in paragraph 9 of the judgment that the presence of the Investigating Officer at the time of trial of the case is a must, his duty being to keep the witnesses present. Thus, if the Investigating Officer failed to remain present at the time of trial of the case, it was the duty of the Sessions Judge to issue summons to the I.O. In a similar vein, it was

observed that if there is failure on the part of the witnesses to remain present, it would be the duty of the Court to take action including issuance of bailable or non-bailable warrants as the case may be. It was accordingly observed that the closure of the prosecution evidence without informing the Investigating Officer was not proper and the procedure adopted by the learned Sessions Judge was sordid and repulsive.

33. In ***Zahira Habibullah Sheikh & Another v. State of Gujarat & Ors. (2004) 4 SCC (Cri) 999 (supra)***, it has been observed that in a criminal case the fate of the proceeding cannot always be left entirely at the hands of the parties. Crimes being public wrongs in breach and violation of public right and duties, which affect the whole community as a community and are harmful to the society in general. It was held that S.311 Cr. P. C. is a power given to the Court not merely to be exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Thus, if any deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, the Courts have to deal with the same with an iron hand appropriately within the frame-work of law. It has been categorically observed that –

> "In the case of a defective investigation the Court has to circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Sec. 311 or at a later stage also resorting to Sec.391 instead of throwing hands in the air in despair. It would not be right in acquitting the accused person solely on account of the defect; to do so would tantamount to

playing into the hands of the Investigating Officer if the investigation is designedly defective."

34. The above decisions, therefore, leave no room for doubt that a Criminal Court cannot shirk the responsibility imposed on it by law in the trial of warrant cases in spite of absence of diligence on the part of the Prosecution to produce evidence in support of his case. The Court in such case has a duty to consider whether the interest of justice requires the summoning of the witnesses on Court's own motion under Section 311 of Cr.P.C. The issue is essentially one which relates to Prosecuting Agency not acting in requisite manner and the role which a Criminal Court is expected to play in such eventuality in a criminal trial. In this regard, the further observation made by the Apex Court in the above cited case of ***Zahira Habibulla H. Sheikh v. State of Gujarat,*** reported in ***(2004) 4 SCC 158,*** is apposite and can be profitably referred to. The observation which occurs in paragraph 44 of the judgment is that where the prosecuting agency does not act in requisite manner a special necessity for exercise of powers u/S 311 Cr. P.C. r/w 165 Evidence Act arises. It is appropriate to reproduce the relevant observation in the said paragraph verbatim as follows: -

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> **"44. The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e.: (*i*) giving a discretion to the court to examine the witness at any stage, and (*ii*) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution.**
> .....
> .....<u>The second part of the section does</u>

> not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, "essential" to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth," *(emphasis supplied)*.

35. Hence, keeping in view the law laid down in the several decisions just cited above, the serious nature of the offence in the case and the procedure that the Special Court is required to follow for trial of such offences, I have no hesitation in holding that the Special Court was under a statutory duty to compel the attendance of prosecution witnesses in the interest of justice and for just decision of the case irrespective of the lack of diligence on the part of the prosecuting agency. Since the Court below failed to exercise the power vested in it, the conclusion is irresistible that there is non-compliance with the provision of law in the procedure followed by the learned trial Court in closing the prosecution evidence for default of the prosecution and the same has resulted in gross miscarriage of justice.

36. At this stage it is appropriate to deal with two misc. applications, namely, Criminal Misc. Application No.14 of 2005 and Criminal Misc. Application No.15 of 2005 filed by Ajay Kumar Jain, accused/Respondent No.8 in both the Criminal Revision Petition Nos. 9 and 10 of 2005. The grievance made by the Petitioner in both the Applications is that he was arrayed as accused No.14 in S. T. (CBI) Case

No.3 of 2004 and as accused No.15 in S. T. (CBI) Case No. 4 of 2004 and vide order dated 12.2.2002 passed by the learned trial Court he was discharged in both the cases. However, in both the Crl. Revision Petition Nos. 9 and 10 of 2005 which have been filed challenging the order dated 3.6.2005 regarding closure of prosecution evidence he has been arraigned as accused/Respondent No.8. In view of this he filed these Crl. Misc. Applications and prayed for expunction of his name from the array of Respondents on the ground that he was not a necessary party. This position, was very fairly conceded to by the learned Special Public Prosecutor during the hearing on 29.8.2006. Accordingly, the name of Shri Ajay Kumar Jain shall stand struck off from the array of accused/Respondents from both the Crl. Revision Petition Nos. 9 and 10 of 2005.

37. For the reasons, observations and the discussions made above, it follows that all the four impugned orders are not sustainable in law and this Court must interfere in exercise of its revisional jurisdiction. Accordingly, I allow the Criminal Revision Petition Nos. 9, 10, 11 and 12 and set aside the impugned orders dated May 26, 2005 passed in Criminal (CBI) Case Nos. 3 and 4 of 2004 and orders dated June 3, 2005 passed in Criminal (CBI) Case Nos. 3 and 4 of 2004 and remand the matter to the learned Special Judge, P. C. Act, East and North, to proceed with further trial accordingly to law.

So far as the requirement of disposing of these cases as expeditiously as possible is concerned, it appears that a clear direction from the Apex Courts already exists. It was submitted by the learned Counsel for the accused/Respondents during the course of the hearing that the Hon'ble Supreme Court vide order dated 23rd September, 2002

passed in Transfer Petition (Criminal) No.514 of 2002 with Criminal Misc. Petition No.8262 of 2003 had directed the learned Special Judge (P. C. Act) Gangtok to proceed with the trial on day to day basis strictly adhering to Sec. 309 Cr. P. C. and yet the matter is still pending. The orders dated 9.12.2002 passed by the concerned Special Judge in S. T. (CBI) Case No.3 of 2004 and S. T. (CBI) Case No.4 of 2004 go to show that necessary steps for day to day hearing of the case in terms of the direction of the Apex Court were initiated. However, it is noticed that the two cases are still pending for more than five years now. In view of this, the learned Special Judge is directed to proceed with the trial of the case on day to day basis, by strictly adhering to the provisions of Sec. 309 Cr. P. C. in terms of the directions of the Apex Court, and shall dispose of the cases as expeditiously as possible.

Records of the lower Court be returned forthwith.

HIGH COURT OF SIKKIM GANGTOK

sd/-
(A. P. Subba)
Judge
20/09/2006

CERTIFIED TO BE TRUE COPY

Deputy Registrar (Judl.)
High Court of Sikkim
at Gangtok